

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Address
Utility Cost and Revenue Issues
Associated with Greenhouse Gas
Emissions.

Rulemaking 11-03-012
(Filed March 24, 2011)

**DECISION APPROVING PRELIMINARY SCOPE OF WORK AND BUDGET
FOR STUDY TO IDENTIFY ADDITIONAL INDUSTRIAL SECTORS AT RISK
OF EMISSIONS LEAKAGE PURSUANT TO DECISION 12-12-033**

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**DECISION APPROVING PRELIMINARY SCOPE OF WORK AND BUDGET
FOR STUDY TO IDENTIFY ADDITIONAL INDUSTRIAL SECTORS AT RISK
OF EMISSIONS LEAKAGE PURSUANT TO DECISION 12-12-033****1. Summary**

Through this decision, the California Public Utilities Commission (Commission) authorizes its Energy Division to hire a consultant to research whether there are industrial sectors at risk of emissions leakage beyond those identified by the California Air Resources Board. Emissions leakage is the risk that, due to the presence of greenhouse gas (GHG) costs in California, some industrial production costs could rise causing production to shift to jurisdictions outside of California where no carbon pricing exists. Thus, any reduction of GHG emissions in California will be offset by a corresponding increase in emissions outside of California. Industries that are both highly emissions intensive and have difficulty passing through costs due to interstate or international competition are most at risk of emissions leakage.

The purpose of this study is to provide analysis to assist the Commission in evaluating whether additional industries should be eligible for the GHG allowance revenue allocated to emissions-intensive and trade-exposed (EITE) industries, as those industries are defined in Decision (D.) 12-12-033. The Commission committed to undertake this research in D.12-12-033. Should additional industries be designated as EITE as a result the Commission's consideration of the study results, newly designated EITE industries will be eligible to receive GHG allowance revenue retroactive to the effective date of the Greenhouse Gas Cap-and-Trade program (January 1, 2013).

A budget of \$500,000 is approved to undertake this study. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must use GHG allowance revenue to reimburse the Commission for its costs related to the study; each utility must contribute an amount in proportion to its respective allocation of 2014 GHG allowances. The utilities should book these costs to their GHG administrative memorandum accounts authorized in D.12-12-033.

It is anticipated that the leakage study will take no more than one year to complete at which point the Commission will consider the results of the study in one or more decisions in this or a subsequent rulemaking.

The Commission's decision to undertake this leakage study in no way prejudices any particular outcome, and no party should assume that the EITE designation will be expanded unless, through rigorous analysis, newly studied industries are found to pose a leakage risk as a result of GHG costs in their electricity purchases.

2. Background and Procedural History

On December 20, 2012, the California Public Utilities Commission (Commission) adopted Decision (D.) 12-12-033, the *Decision Adopting Cap-and-Trade Greenhouse Gas Allowance Revenue Allocation Methodology for the Investor-Owned Utilities*. In that decision, the Commission adopted a greenhouse gas (GHG) revenue allocation methodology that directed a portion of revenues toward emissions-intensive and trade-exposed (EITE) industries, as required by Senate Bill 1018.¹ D.12-12-033, in adopting a statutory construction of Senate Bill 1018, defined an EITE customer as “any entity in an industry that qualifies for

¹ Statutes of 2012, Chapter 39.

Industry Assistance under the California Air Resources Board (ARB) Cap-and-Trade regulation,² regardless of the amount of emissions produced...”³ D.12-12-033 determined that GHG allowance revenue should be returned to EITE entities based upon the methodologies (either energy-based benchmarks or product output based benchmarks) set forth in Appendix J, Allowance Allocation, to the ARB’s Initial Statement of Reasons (ISOR) on its proposed Cap-and-Trade regulation.⁴

The list of eligible industries established by ARB was limited to industries having at least one facility with a compliance obligation under ARB’s Cap-and-Trade regulation. ARB developed its list of eligible industries by studying the extent to which industries directly covered by the Cap-and-Trade regulation (i.e., those that directly emit over 25,000 metric tons of carbon dioxide equivalent gas per year) are both emissions intensive and exposed to international trade pressures. These two metrics together provided an indicator of leakage risk. Emissions leakage risk is the risk that, due to the presence of GHG costs in California, some industrial production costs could rise causing production to shift to jurisdictions outside of California where no carbon pricing exists. Thus, any reduction of GHG emissions in California will be offset by a corresponding increase in emissions outside of California. Industries that are

² California Code of Regulations, Title 17, Division 3, Subchapter 10 (Climate Change), Article 5, §§ 95800-960232.

³ D.12-12-033 at 87.

⁴ California ARB, Proposed Regulation to Implement the California Cap-and-Trade Program, Initial Statement of Reasons (ISOR), Part I, Volume IV, Appendix J: Allowance Allocation.

<http://www.arb.ca.gov/regact/2010/capandtrade10/capv4appj.pdf>

both highly emissions intensive and have difficulty passing through costs due to interstate or international competition are most at risk of emissions leakage.

In D.12-12-033, the Commission found that additional industries may suffer leakage risk as a result of the indirect GHG costs they will experience through their electricity purchases, and these industries may not have been studied by ARB because they do not have a direct compliance obligation under the Cap-and-Trade regulation due to their low direct emissions. Citing the need for further study, D.12-12-033 stopped short of expanding the list of industries eligible for the “EITE” designation. Rather, the Commission committed to undertake a process to explore this issue further. Decision 12-12-033 concluded that the principle question to be studied is: “which industries, outside those already designated by ARB to be eligible for Industr[y] Assistance, pose a leakage risk as a result of their indirect emissions costs resulting from their electricity purchases.”⁵

On August 13, 2013, the assigned Commissioner and assigned Administrative Law Judge (ALJ) in this proceeding issued a ruling (EITE Ruling) proposing a high-level scope of work, timeline, budget, and preliminary list of industries for a study to consider the possible expansion of the EITE designation. On September 4, 2013, parties submitted opening comments⁶

⁵ *Id.* at 86.

⁶ Opening comments were submitted by the California Farm Bureau Federation (CFBF), the California Large Energy Consumers Association (CLECA), the California League of Food Processors (Food Processors), the California Manufacturers and Technology Association (CMTA), the Data Center Coalition (DCC), the Joint Parties (consisting of the Natural Resources Defense Council, the Greenlining Institute, the National Consumer Law Center, and the Climate Protection Campaign), and the Joint Utilities (Consisting of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E))

largely in support of the proposed study, although with several proposed modifications, as discussed later in this decision. Parties submitted reply comments⁷ on September 18, 2013.

3. Possible Expansion of the EITE Designation

In various filings prior to the issuance of D.12-12-033, the Agricultural Parties and the Large Users claimed that many industries not currently eligible to receive Industry Assistance may pose a leakage risk as a result of indirect emissions from purchased electricity, but no party to Rulemaking 11-03-012 to date has provided adequate data to support such a claim. Therefore, before the Commission can address whether there is a need to expand the EITE designation adopted in D.12-12-033, the Commission needs additional quantitative information and analysis about which industries, not already studied by ARB, may suffer leakage risk as a result of GHG costs embedded in electricity costs.

3.1. ARB Evaluation of Emissions Intensity and Trade Exposure

ARB, in determining the set of industries eligible for Industry Assistance, relied on a comprehensive and in-depth analysis to ascertain leakage risk. To evaluate an industry's overall leakage risk, ARB separately assessed each industry's emissions intensity and trade exposure via methodologies described in Appendix K to the ARB staff's ISOR on its proposed Cap-and-Trade regulation.⁸ To determine emissions intensity, ARB used a methodology drawn from Australia's Carbon Pollution Reduction Scheme, which measures intensity as a ratio of metric tons of carbon dioxide emitted, including indirect and process

⁷ Reply comments were received by the CFBF, DCC, CLECA, and the Office of Ratepayer Advocates (ORA).

⁸ California ARB, Proposed Regulation to Implement the California Cap-and-Trade Program, Initial Statement of Reasons (ISOR), Part I, Volume IV, Appendix K: Leakage Analysis. <http://www.arb.ca.gov/regact/2010/capandtrade10/capv4appk.pdf>.

emissions, per million dollars of revenue or value added. Sectors with emissions intensity greater than 5,000 were classified as “high emissions intensity,” sectors with emissions intensity between 4,999 and 1,000 were classified as “medium emissions intensity,” sectors with emissions intensity between 999 and 100 were classified as “low emissions intensity,” and sectors with emissions intensity below 100 were classified as “very low emissions intensity.”

To determine trade exposure – a measure of an industry’s ability to pass through costs in the prices of the goods and services it produces – ARB staff adopted the metric used in the American Clean Energy and Security Act of 2009.⁹ This metric consists of the ratio of the sum of the value of imports and exports divided by the sum of the value of all shipments from facilities located in the U.S. and the value of imports, which is shown below in formula format.

$$\text{Trade Exposure} = \frac{\text{Imports} + \text{Exports}}{\text{Shipments} + \text{Imports}}$$

Due to the unavailability of state-level import data, ARB relied on national and regional trade data. ARB concluded that because regional data are only available at the four-digit North American Industry Classification System (NAICS) level, it was preferable to rely on national data to determine trade share, with one exception. Because markets for petroleum products are regionally segregated to a large degree, and there are significant differences in trade shares across regions of the United States, ARB decided to use regional data for the petroleum refining sector. After examining the pattern of trade share percentages for the industries with a compliance obligation under the Cap-and-Trade program, ARB staff proposed three categories for these

⁹ This bill, H.R. 2454 (2009), was passed by the U.S. House but defeated in the U.S. Senate, and would have established a national cap-and-trade program.

industries: “high” for trade shares greater than 18%, “medium” for trade shares between 18% and 10%, and “low” for trade shares less than 10%.

Using a combination of emissions intensity and trade exposure metrics, ARB staff proposed a composite ranking of leakage risk with high, medium and low classifications. High leakage risk industries tend to have medium to high emissions intensity and high trade exposure; medium leakage risk industries generally have low to medium emissions intensity and medium trade exposure; and low leakage risk industries have low emissions intensity and low trade exposure. ARB determined that industries that pose a leakage risk should be eligible for Industry Assistance under the Cap-and-Trade regulation in the form of varying amounts of freely allocated allowances depending on the level of leakage risk. As stated earlier, ARB’s level of Industry Assistance is based only on direct emissions (including emissions from steam purchases), not indirect emissions as a result of purchased electricity.

4. Scope of EITE Expansion Study

This decision adopts a preliminary scope of work for a consultant hired by Energy Division to evaluate the leakage risk of industries not already studied by ARB; however, Energy Division has the authority to modify the scope as necessary and will ultimately be responsible for developing the final scope of work.

The EITE Ruling proposed that the study be divided into two broad phases. In the first phase, the consultant would assess the leakage risk of the industries selected for study and recommend which industries, if any, it believes should be deemed EITE. If in the first phase of analysis the consultant identifies new EITE industries, in the second phase the consultant would recommend methods and metrics for providing financial compensation to the industries, relying upon the methodologies set forth in Appendix J, Allowance Allocation, to

the ARB staff's proposed Cap-and-Trade regulation and on the EITE revenue allocation methodologies separately being developed in this proceeding.

The EITE Ruling proposed that Phase 1 consist of the following four tasks:

- Task 1. The consultant, in collaboration with the Energy Division and parties, will finalize the methodologies and data sources for measuring emissions intensity and trade exposure. It is best to maintain consistency with ARB's approach, but if there are compelling reasons to deviate from ARB's methodology (e.g., the availability of state-level import or export data for one or more industries), then differences may be desirable.
- Task 2. The consultant will conduct an initial screening of the industries in the manufacturing and agricultural sectors identified above for two criteria: presence in California and a high-level assessment of emissions intensity, possibly using national data sets. The consultants will then release their recommendation for industries to include in a more in-depth analysis for informal comment by the parties. Under the direction of the Energy Division, the consultants will finalize a list of industries that will receive a more thorough emissions intensity and trade exposure analysis.
- Task 3. The consultant will produce a draft study with preliminary metrics for emissions intensity and trade exposure as well as recommended classifications of industries by leakage risk.
- Task 4. After taking informal comments on the draft study, the consultant will produce a final report with recommended classifications of industries by leakage risk. The final report shall explain in detail the methodologies, data sources, and results of their analysis.

4.1. Phase 1

Parties filed comments largely in support of the proposed first phase of the study, but provided a number of suggested changes to the scope of work.

CLECA supports reliance upon the methodology in ARB's ISOR Appendix K, but suggests that appropriate modifications be permitted to address indirect impacts, such as methodologies to determine indirect emissions intensity and trade exposure. The Joint Utilities raise concerns regarding the data sources used to determine indirect emissions intensity and suggest that if emissions intensity is calculated by comparing GHG costs to value added (as is used by the European Union Emission Trading Scheme), the cost component should include not only direct and indirect Cap-and-Trade costs, but also the other GHG-abatement costs incurred by electricity and natural gas customers, including the cost of the 33% Renewables Portfolio Standard and the costs of public purpose programs.

CFBF cautions that the screening test in the proposed Task 2 regarding emissions intensity is inappropriately limited. CFBF notes that ARB evaluates leakage risk through a combined assessment of emissions intensity and trade share, and low emissions intensity could still indicate leakage risk if trade exposure is sufficiently high. Therefore, emissions intensity must be considered in the context of trade exposure to ensure that leakage risk is adequately identified. The Food Processors filed comments largely in support of the proposed scope of work, but caution that the Commission must ensure that the consultant coordinate its work with other ongoing leakage studies to avoid duplication of efforts. For example, the Food Processors cite to an ARB funded study on "The Impact of AB 32 on the Competitiveness of California Food Processing Industries."¹⁰

Upon a review of parties' comments, this decision directs the Commission's Energy Division to retain a consultant to undertake Phase 1 of

¹⁰ See ARB Resolution 11-32, Agenda Item 11-8-1, October 20, 2011, at 11.

the EITE expansion study to determine what, if any, industries not already designated as EITE pose a leakage risk and should receive GHG allowance revenues to address indirect GHG costs embedded in electricity purchases. The Commission agrees with CLECA and the Joint Utilities that flexibility in the definition of emission intensity, among other variables, may be necessary, and therefore supports a flexible approach that allows the consultant to pursue alternatives to the methodology set forth in ARB's ISOR Appendix K. Furthermore, the Commission agrees with CFBF that emissions intensity alone, without consideration of trade exposure, could unnecessarily screen out low-emissions intensity industries that face leakage risk and modifies Task 2 accordingly.

This decision stops short of adopting any particular measure of emissions intensity or trade exposure. Determining these metrics will be the consultant's first task. Energy Division and the consultant must seek feedback from parties when identifying methodologies and data sources to evaluate emissions intensity and trade exposure, and parties should have an opportunity to informally provide feedback on the proposed methodologies and data sources, as set forth in Task 2, below. In addition, parties will have the opportunity to comment on the methodologies and data sources used by the consultant in its evaluation of leakage risk, as well as the list of industries studied, when the Commission evaluates the consultant's recommendations, as set forth in Task 4, below.

Energy Division has ultimate authority to determine the final scope of work for Phase 1 of the study, as proposed in the EITE Ruling, and Energy Division has authority to switch the order of Tasks 1 and 2 if it feels it is more efficient to first identify a list of industries to study before developing methodologies and identifying data sources. The Commission agrees with CFBF that any analysis undertaken by the consultant must consider other leakage

analyses conducted by ARB or other entities in order to avoid unnecessary duplication of work.

The preliminary list of tasks to be considered in Phase 1 is as set forth below. The tasks are slightly modified from those in the EITE Ruling based upon the comments of parties.

- Task 1. The consultant should review and consider all relevant leakage studies. The consultant, in collaboration with the Energy Division and parties, will finalize the methodologies and data sources for measuring emissions intensity and trade exposure. The adopted methodologies should aim to maintain consistency with ARB's general approach set forth in ISOR Appendix K unless alternate methodologies are more appropriate.
- Task 2. The consultant will conduct an initial screening of the industries for two criteria: presence in California (yes/no) and a high-level assessment of emissions intensity and trade exposure, possibly using national data sets, to eliminate industries that are highly unlikely to pose a leakage risk. The consultant will then serve its resulting recommendation of industries to study in detail to the service list of this or a successor rulemaking for informal comment by the parties. Under the direction of the Energy Division, the consultant will finalize a list of industries that will receive a thorough emissions intensity and trade exposure analysis.
- Task 3. The consultant will then conduct its analysis and produce a draft report with preliminary metrics of emissions intensity and trade exposure by industrial sector, as well as recommended classifications of industries by leakage risk (high, medium, low, or no risk). The draft report must be served on the service list for this or a successor proceeding and parties may provide informal comments on the draft study.
- Task 4. After taking informal comments on the draft report, the consultant will produce a final report with

recommended classifications of industries by leakage risk. The final report shall explain in detail the methodologies, data sources, and results of the consultant's analysis. The final report will be incorporated into the formal record by written ruling of the assigned ALJ, and parties will have an opportunity to provide formal comments on the final report.

4.2. Phase 2

For the second phase of the analysis, the EITE Ruling proposes that the consultant recommend, to the extent possible, methods and metrics for compensating the industries that it believes should qualify as EITE. The Ruling states that it is best to maintain consistency with ARB's allowance allocation approach, but differences may be necessary or preferable for some of the industries under consideration. In general, an output-based (also referred to as product-based) approach that provides compensation in proportion to the amount of product that a facility produces in any given year is preferable. However, the more heterogeneous an industry's output, the more complex this method of allocation becomes. Approximately half of the industries receiving Industry Assistance from ARB under the Cap-and-Trade regulation receive allocations using output-based benchmarks.

The EITE Expansion Ruling proposes that the consultant produce a draft Phase 2 report for informal comment that recommends which industries should receive compensation using output-based allocation benchmarks and which should receive compensation using a historical energy-based allocation. In instances where the consultant recommends output-based benchmarks, the consultant should identify specific benchmarks. After taking informal comment on the draft report, the consultant should produce a final report, subject to approval of the Energy Division.

The Joint Utilities, in their opening comments, argue that Phase 2 should be eliminated and the Commission should adopt an energy-based benchmark until ARB adopts a more appropriate benchmark for each industry. A product-based benchmark would be extremely complex and time-consuming to develop, the Joint Utilities argue, and adoption of an energy-based benchmark would enable revenues to begin to flow to newly designated EITE entities as quickly as possible. The Joint Utilities' position is supported by CFBF. No other party commented on the Phase 2 scope of work.

Concerns regarding the timing of Phase 2 are addressed in the section regarding the procedural schedule below. The Joint Utilities' request to eliminate Phase 2 of the proposed EITE expansion study is rejected. While it is possible that the Commission may determine that an energy-based allocation is appropriate for any new EITE industries identified, due to a lack of necessary data, complexity, or any other reason, it is inappropriate to prejudge such an outcome at this time without knowledge of the characteristics of the industries that may later receive the EITE designation, if any. Furthermore, waiting for ARB to develop a benchmark, as suggested by the Joint Utilities, may be moot as ARB has generally focused on the direct, rather than indirect, emissions of industries when allocating allowances.

The Phase 2 scope of the EITE expansion study is adopted as proposed in the EITE Ruling, with minor clarifications to allow for flexibility when relying upon Appendix J if other more appropriate methodologies exist. The consultant must serve its draft Phase 2 recommendation on the service list of this or a successor rulemaking, and parties will be afforded the opportunity to provide informal feedback. Upon completion, the final Phase 2 consultant report will be entered into the record of this or a successor rulemaking by written ruling of the assigned ALJ. Parties will be invited to provide formal comments on the final

report. As proposed in the EITE Expansion Ruling, Energy Division has authority to modify the proposed Phase 2 scope and sequence of work as necessary to obtain the information required for the Commission to make an informed decision on the appropriate GHG revenue allocation methodology for any new industries that it concludes should be added to the EITE designation.

5. Industries to be Evaluated

ARB restricted its analysis of leakage risk to the manufacturing and resource extraction industries that have at least one facility with a direct compliance obligation under the Cap-and-Trade program. Because leakage risk could occur as a result of indirect emissions from electricity use or the presence of GHG costs in the natural gas rates of customers that are not covered entities, there may be a range of industries at risk of leakage that were not initially studied by ARB.

To establish a reasonable scope of study, the EITE Ruling limited the study to the analysis of industries that are plausibly emissions intensive or are not necessarily limited to serving local markets by the nature of their business activity. The EITE Ruling proposed that the analysis should include industries in agricultural subsectors 111 (crop production) and 112 (animal production and aquaculture), all industries in the mining and extraction sectors (NAICS Code 21), all industries in the manufacturing sector (NAICS Codes 31-33), and data processing, hosting, and related services (NAICS Code 518), except for industries already studied by ARB or currently being studied by ARB.

Multiple parties provided feedback on the list of proposed industries as well as additional industries the Commission should consider. For example, CLECA proposes that pipeline transportation should be considered, CMTA supports the inclusion of energy-intensive research and development activities, DCC suggests the inclusion of data centers, and the Joint Utilities propose the

inclusion of water transportation services. In addition, the Food Processors point out that the level of the NAICS code is important; ARB studied the food processing industry at the NAICS 3-digit level, which the Food Processors argue does not account for the diversity in the nature and type of products and processing operations throughout the industry.

CLECA suggests that the Commission also examine the location of production, recognizing that production of an output can occur either within an EITE facility or outside the facility by a third party. In the case of production by a third-party producer, CLECA argues that the producer is entitled to the same leakage mitigation as the EITE customer producing the output on its own behalf. To support its argument, CLECA points to ARB's treatment of hydrogen manufacturing.

CLECA further argues that the Commission must consider the disparate treatment of EITE entities that could occur between an investor-owned utility (IOU) and a publicly-owned utility (POU). In the case of direct emissions, the EITE entity is treated the same regardless of the type of service it receives, but in the case of indirect emissions, a POU could use its allowance revenue to mitigate overall electricity rates for industrial customers, whereas an industry not designated as EITE in an IOU service territory under the Commission's jurisdiction would receive no such rate mitigation.

Finally, CLECA proposes that the Commission consider the indirect impacts on EITE entities as a result of the increased cost of goods and services it must procure from non-EITE designated industries. A sector not designated as EITE will experience GHG costs, and it is reasonable to assume that it will attempt to pass through these costs in the price of its goods and services. If an EITE industry is particularly dependent on the products or services of a certain non-EITE sector, CLECA argues, the EITE-eligible facility will face additional

indirect GHG costs that are not otherwise mitigated, and a leakage risk would remain. Therefore, CLECA proposes that the EITE designation should extend to producers in sectors that primarily serve EITE industries.

As stated in the EITE Ruling, the Commission will not adopt a specific list of industries or specific data sources to be considered for the leakage study at this time; rather, Energy Division, in consultation with the consultant and parties, will ultimately determine the industries to be evaluated, including the appropriate level of NAICS code for study (3, 4, 5 or 6-digit level), and the appropriate data sources to be used. Energy Division must consider the comments of parties on the EITE Ruling in developing a final list of industries for study, and Energy Division should provide parties an informal opportunity to provide feedback during the finalization of the scope of work as set forth in Task 2 of Phase 1. As stated earlier in this decision, parties will be afforded the opportunity to provide formal comment upon incorporation of the consultant's report into the formal record of this or a successor rulemaking.

6. Schedule and Procedure to Evaluate Study Results

The EITE Ruling proposed that both phases of the study would be completed within one year of the issuance of today's decision, with extensions permitted upon written ruling of the assigned Commissioner or assigned ALJ.

Parties generally were of the mindset that the study should be completed as quickly as possible to ensure that newly designated EITE industries, if any, receive GHG allowance revenue as soon as possible. As stated by CLECA in opening comments "[t]he proposed schedule will leave indirect EITE sectors exposed to indirect emissions costs through the first Cap-and-Trade compliance period." CLECA continues "The [Commission] should place a higher priority on

the study schedule....trimming the study period to placing tight constraints on the comment and proposed decision process.”¹¹

The Commission recognizes the need to complete the EITE expansion study as quickly as possible to ensure that industries newly designated as EITE, if any, receive GHG allowance revenue in as timely a manner as possible. The Commission anticipates that the study process will take about a year, but the Commission is supportive of reasonable efforts by its Energy Division to complete the study in an expedited manner, as suggested by CLECA, assuming a consultant can be retained to complete the study under a shortened time-frame (and within the approved budget).

While an expedited evaluation is preferable, expansion of the EITE designation would result in money going to industries not currently contemplated in D.12-12-033, which would reduce the amount of the semi-annual residential GHG allowance revenue return by a corresponding amount. Assignment of GHG revenues is not to be taken lightly, and a thorough and careful evaluation is necessary. Due process for all parties is essential; therefore, the Commission is unwilling at this time to commit to any tightened comment period on proposed decisions, as suggested by CLECA. The Commission will evaluate expedited comment periods on proposed decisions at the time of issuance of those decisions.

Given the uncertainty surrounding the scheduling capabilities of the consultant, a detailed procedural schedule cannot be adopted at this time. Upon retention of a consultant, the assigned ALJ will issue a ruling setting forth a more detailed procedural schedule and process, including study milestones, which will be updated as necessary as the study progresses.

¹¹ CLECA Opening Comments, September 4, 2013, at 4-5.

6.1. Sequencing of Phase 1 and Phase 2

Several parties raised concerns about the sequencing of Phase 1 and Phase 2 of the leakage study. In opening comments, the Joint Parties argued that the Commission should not begin to develop GHG revenue return methodologies for an expanded set of EITE industries before the Commission deliberates on the Phase 1 report recommendations. The Joint Parties' position is supported by ORA in reply comments. DCC, on the other hand, argues that the Commission should not create unnecessary delay by waiting to begin Phase 2 until the Commission addresses the conclusions of the Phase 1 report. CMTA suggests that the Commission build in flexibility in the procedural schedule such that if certain industries can be studied relatively quickly, the Commission allow for interim findings on these industries rather than waiting for one final report and decision on all investigated industries.

The Commission seeks to return GHG revenues to newly designated EITE industries, if any, as soon as is practicable; however, the Commission also wants to avoid unnecessary work and expenditures. As stated previously in this decision, the Commission is not making a determination on the GHG revenue allocation methodology, whether energy or output-based, at this time, nor is the Commission prejudging whether any new industries will demonstrate a leakage risk and be deemed EITE. Rather, the Commission will consider the issue of appropriate allocation methodologies once it has sufficient information about the leakage risk of newly studied industries and characteristics of those industries that will help the Commission to make informed decisions.

The Commission acknowledges the intent of CMTA's proposed phased approach; however, such an approach could actually have the effect of fragmenting and slowing both the consultant's work and the Commission's own process. As a result, CMTA's proposal is denied at this time. If the Energy

Division identifies opportunities to accelerate its consideration of these issues it retains the ability to pursue those opportunities. At this time, however, the optimal approach is to allow the consultant time to complete its Phase 1 and Phase 2 research and allow parties the opportunity to formally comment on the research before the Commission deliberates on the consultant's recommendations.

7. Budget

The EITE Ruling proposed that the budget for the expansion study be funded in a similar manner as the customer education and outreach study provided for in D.12-12-033.¹² Any contribution to the cost of the consultant by the small IOUs was found to be *de minimus*; therefore, for administrative ease, the EITE Ruling proposed that the large IOUs cover the entire study cost.

No party filed comments opposing the proposed expansion study budget or funding source. CMTA filed comments in support of the proposed budget, and the Joint Utilities and CLECA offered support for the funding source (GHG allowance revenue); however, the Joint Utilities stated that they had no insight into appropriateness of the proposed budget magnitude. CLECA, in opening comments, states that the budget should not be capped at \$500,000 if more is required to expedite the schedule.

The EITE Ruling proposes a \$500,000 budget based upon budgets approved by ARB for use in similar leakage studies. A \$500,000 budget is reasonable and is adopted here. CLECA's proposal to eliminate a budget cap and allow budget flexibility in exchange for an expedited timeframe is denied; a specific budget must be adopted for Energy Division to proceed with its work,

¹² See D.12-12-033 at 139.

and it is unclear what timeframe would count as “expedited” and what amount of additional budget, if any, would be warranted to compensate for an expedited completion. The Energy Division will select a consultant based upon expertise, proposed budget, proposed study timeframe, and other characteristics it deems appropriate.

No party objected to the use of GHG allowance auction revenue to fund the leakage study, and this funding source is adopted. Furthermore, no party objected to the proposed cost allocation to the large IOUs, that is a cost allocation based upon percentage of retail sales. However, to provide the utilities with greater clarity and ease on cost allocation while maintaining comparable fairness about how they should reimburse the Commission for the costs of this study, a slight change to the allocation methodology across the IOUs is adopted. Rather than provide funding from allowance revenues in proportion to their respective retail sales, PG&E, SCE and SDG&E should provide allowance revenues to cover study costs in proportion to the amount of 2014 vintage GHG allowances allocated to them by ARB. The utilities will use this allowance revenue to reimburse Energy Division for the costs of the contract, and the utilities should record these costs to their GHG Cap-and-Trade administrative memorandum accounts authorized by D.12-12-033.

8. Safe Harbor Proposal and Retroactive Allocation of Allowance Revenues

CLECA, in opening comments, proposes that the Commission adopt a safe harbor EITE designation for 2014 to mitigate the effects of accrued indirect GHG compliance costs for industries that are likely to be deemed EITE. To create a safe harbor, CLECA recommends the Commission adopt criteria to assess whether a sector is highly likely to be EITE, including the following: a) the sectors or subsectors have the same six-digit NAICS Code as other sectors

designated by ARB as eligible to receive Industry Assistance; b) the sector has high electricity intensity, meaning that electricity costs are a specified percentage of a facility's total production costs; and c) a significant percentage of a sector's sales are made to ARB-designated entities eligible for Industry Assistance. In the event that the Commission finds that certain entities receiving safe harbor status are not indeed eligible for EITE status, CLECA proposes that these entities would be billed by the utility to recover the credits provided to the customer.

On a related matter, the Joint Utilities, in opening comments, propose that any GHG allowance allocations be made on a prospective basis; a retroactive return, they argue, would be administratively burdensome, costly, and could prove confusing for customers. CLECA disagrees and argues that any new EITE entities should be made whole for the entirety of the time they were made to bear full GHG costs; CLECA argues that administrative burden is not a compelling reason to deny access to revenues. CMTA agrees with CLECA but proposes that the Commission order the utilities to set aside an estimated amount of revenues to be used for GHG allowance revenue returns to newly designated EITE entities once those entities are designated as such.

The Commission declines at this time to create a safe harbor or to order the utilities to set aside any GHG allowance revenues for industries that may, at a later date, be designated as EITE entities. While the Commission appreciates the fact that industries that believe they should be designated as EITE will incur GHG costs while the Commission undertakes its leakage study, there is no guarantee that any industry being studied will indeed warrant a designation as EITE. Furthermore, as noted by the Joint Parties in opening comments, no industry to date in the more than 30 months that this rulemaking has been active has provided sufficient data to substantiate assertions that it faces a leakage risk and should receive GHG allowance revenue. Therefore, it is reasonable for any

industry not already designated as EITE under D.12-12-033 to operate under the assumption that it will not receive GHG allowance revenue and plan accordingly while the Commission undertakes the leakage study.

The only compelling exception to the above finding pertains to sectors or subsectors that have the same six-digit NAICS Code as other sectors designated by ARB as eligible to receive Industry Assistance. Here, it is plausible that these industries will be designated as EITE, and it may be appropriate to allocate GHG allowance revenue according to the same timeframe as those already designated as EITE in D.12-12-033, with a provision for the funds to be returned if the Commission does not ultimately extend the EITE designation to these industries upon completion of the leakage study. However, the Commission defers a final finding on this issue to the upcoming decision addressing EITE GHG revenue allocation formulas and associated processes in order to allow for a more complete consideration of the mechanics of this exception, including a process for industries to attest to the nature of their primary industrial activities.

The Commission agrees with CLECA and CMTA and finds that any entity designated as EITE upon Commission deliberation on the leakage study should receive GHG allowance revenue retroactive to the date that the Cap-and-Trade program went into effect (January 1, 2013). To avoid confusion and ease administrative burden, at the time retroactive returns are due, these payments should come from future years' GHG allowance revenues, and the resulting residential GHG allowance return will be adjusted accordingly. There is no need to adopt a set-aside of GHG allowance revenue in anticipation of a retroactive GHG revenue return; reconciliations such as these were anticipated by the Commission in D.12-12-033 and can be considered in the proceedings addressing GHG cost and revenue forecasts and reconciliations in future years.

9. Comments on Proposed Decision

The proposed decision of ALJ Semcer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on January 27, 2014 by CFBF, CLECA, CMTA, and the Joint Utilities. Reply comments were filed on February 3, 2014. Parties filed comments generally in support of the proposed decision with several suggested changes. After careful consideration of the proposed changes, the decision is changed in the following substantive ways:

- 1) Upon consideration of the comments of CLECA and CMTA, the Commission finds that it is appropriate at this time to provide certainty regarding retroactive payments to entities designated as EITE through the Commission's consideration of the leakage study. Section 8 and Finding of Fact 19 are modified and a new Conclusion of Law 16 is added to allow for a guarantee of retroactive payment backdated to the effective date of the Cap-and-Trade program (January 1, 2013) to any entity designated as EITE by the Commission.
- 2) The Commission agrees that one criteria of CLECA's safe harbor proposal regarding sectors or subsectors that have the same six-digit NAICS Code as other sectors designated by ARB warrants further consideration; however, the Commission defers consideration of this issue to the upcoming decision addressing EITE formulas and processes. Section 8 and Conclusion of Law 14 are modified, and a new Finding of Fact 20 is added.

In addition, the decision is changed in the following non-substantive ways:

- 1) Task 1 of Phase 1 and Phase 2 of the study are modified to clarify that the consultant and Energy Division retain flexibility in developing methodologies if more appropriate methodologies exist than those used by ARB to develop eligibility for its Industrial Assistance program and to allocate allowances to those industries. Sections 4.1

- and 4.2, Appendix 1, and Conclusions of Law 2 and 3 are changed to better reflect this intended flexibility.
- 2) Section 5 and Finding of Fact 3 are modified to better align the language of this decision with D.13-12-041 in regards to the impact of the expansion of the EITE designation on the non-volumetric residential GHG allowance return.
 - 3) Finding of Fact 9 is modified to clarify that the EITE designation relies upon a balancing of emissions intensity and trade exposure.
 - 4) Section 5 is modified to account for CMTA's request that the Commission consider energy-intensive research and development activities in the list of industries to be considered for the possible EITE expansion. However, as stated in the proposed decision, the final list of industries to be considered will be determined by Energy Division and the consultant in consultation with parties.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Melissa K. Semcer is the assigned ALJ in this proceeding.

Findings of Fact

1. D.12-12-033, in adopting a statutory construction of Senate Bill 1018, defines an EITE customer as any entity in an industry that qualifies for Industry Assistance under the ARB Cap-and-Trade regulation, regardless of the amount of emissions produced. D.12-12-033 determined that GHG allowance revenue should be returned to EITE entities based upon the methodologies (either energy-based benchmarks or product output based benchmarks) set forth in Appendix J, Allowance Allocation, to the ARB's ISOR on its proposed Cap-and-Trade regulation.

2. Emissions leakage risk is the risk that, due to the presence of GHG costs in California, some industrial production costs could rise causing production to shift jurisdictions outside of California where no carbon pricing exists. Thus, any reduction of GHG emissions in California will be offset by a corresponding

increase in emissions outside of California. Industries that are both highly emissions intensive and have difficulty passing through costs due to interstate or international competition are most at risk of emissions leakage.

3. Expansion of the EITE designation would result in money being returned to industries not currently contemplated in D.12-12-033, which would reduce the amount of the semi-annual residential GHG allowance revenue return by a corresponding amount.

4. ARB restricted its analysis of leakage risk to the manufacturing and resource extraction industries that have at least one facility with a compliance obligation under the Cap-and-Trade program. In D.12-12-033, the Commission found that there may exist an additional range of industries may suffer leakage risk as a result of the indirect GHG costs they will experience through their electricity purchases, and these industries may not have been studied by ARB because they do not have a compliance obligation under the Cap-and-Trade regulation due to their low direct emissions. The Commission committed to undertake a process to evaluate the possible existence of such industries in D.12-12-033.

5. To evaluate an industry's overall leakage risk, ARB separately assessed each industry's emissions intensity and trade exposure via methodologies described in Appendix K to the ARB staff's ISOR on its proposed Cap-and-Trade regulation. Using a combination of emissions intensity and trade exposure metrics, ARB staff proposed a composite ranking of leakage risk with high, medium, and low classifications. ARB determined that these industries should be eligible for Industry Assistance under the Cap-and-Trade regulation in the form of varying amounts of freely allocated allowances, depending on the level of leakage risk.

6. No party representing industries not already designated as EITE has provided adequate data to date to support claims of leakage risk as a result of indirect emissions.

7. Before the Commission can address whether there is a need to expand the EITE designation adopted in D.12-12-033, the Commission needs additional quantitative information and analysis about what industries not already studied by ARB are both emission intensive and trade exposed and, as a result, may pose a leakage risk as a result of GHG costs embedded in electricity costs.

8. It may be necessary for the Commission to rely on methodologies different than those in ARB's ISOR Appendix K to account for indirect emissions intensity. The Commission lacks the necessary data to adopt any particular measure of emissions intensity or trade exposure at this time.

9. Determining an industry's EITE classification requires a balancing of emissions intensity and trade exposure. For example, an industry with low emissions intensity could still be at risk for leakage if trade exposure is sufficiently high.

10. ARB is currently undertaking various studies to consider leakage risk, including one entitled "The Impact of AB 32 on the Competitiveness of California Food Processing Industries."

11. ARB allocates allowances to industries eligible for Industry Assistance based upon an output-based (also referred to as product-based) or energy-based benchmark. Approximately half of the industries receiving Industry Assistance from ARB under the Cap-and-Trade regulation receive allocation using output-based benchmarks. Determining an output-based allocation can be difficult due to lack of data or other reasons. The Commission, having not yet determined which industries, if any, are eligible to receive the EITE designation,

lacks sufficient record to determine the appropriate benchmarking methodology at this time.

12. Energy Division, in consultation with the consultant and parties to this proceeding, will determine the appropriate level of NAICS code and the list of industries to be evaluated for leakage risk and possible designation as EITE entities, taking into consideration the comments of parties to this proceeding.

13. The EITE leakage study is anticipated to take about a year to complete, although Energy Division is encouraged to take reasonable steps to complete the study on an expedited basis, subject to the constraints of the consultant and Energy Division staff. Entities not currently identified as EITE will be exposed to GHG costs while the Energy Division undertakes the leakage study.

14. Given the uncertainties surrounding the scheduling capabilities of the consultant, a detailed procedural schedule cannot be adopted at this time.

15. CMTA's proposal to allow for a phased approach when studying industries, whereby if certain industries can be studied quickly, the Commission adopt interim findings on these industries, could have the effect of fragmenting and slowing both the consultant's work and the Commission's evaluation process. The optimal approach is to allow the consultant time to complete its Phase 1 and Phase 2 research and allow parties the opportunity to formally comment on the research before the Commission deliberates on the consultant's recommendations.

16. The EITE Ruling proposed a budget for the EITE leakage study of \$500,000 based upon budgets approved by ARB for use in similar leakage studies. A specific budget must be adopted for Energy Division to retain a consultant. CLECA's proposal to remove a cap and allow for a flexible budget if the study can be completed on an expedited basis is impracticable. It is unclear

what timeframe would count as “expedited” and what amount of additional budget, if any, would be warranted to compensate for an expedited completion.

17. Funding for the customer education and outreach study approved in D.12-12-033 came from GHG allowance revenues and was divided among the three large IOUs in proportion to their retail sales. Any contribution to the cost of that study by the small IOUs was found to be *de minimus*; therefore, for administrative ease, the large IOUs were ordered to fund the entire cost of the study.

18. Allocating the leakage study costs in proportion to the amount of 2014 vintage GHG allowances allocated to each large IOU by ARB will achieve greater clarity and ease on cost allocation while maintaining comparable fairness to a cost allocation based upon percentage of retail sales.

19. Returning GHG allowance revenue retroactive to the date that the Greenhouse Gas Cap-and-Trade program went into effect (January 1, 2013) to entities newly designated as EITE through the Commission’s consideration of the leakage study will ensure fair treatment of all EITE customers under the Commission’s adopted GHG revenue allocation scheme. To avoid confusion and ease administrative burden, at the time retroactive returns are due, these payments should come from future years’ GHG allowance revenues, and the resulting residential GHG allowance return will be adjusted accordingly. There is no need to adopt a set-aside of GHG allowance revenue in anticipation of a retroactive GHG revenue return; reconciliations such as these were anticipated by the Commission in D.12-12-033 and can be considered in the proceedings addressing GHG cost and revenue forecasts and reconciliations in future years.

20. It is plausible that sectors or subsectors that have the same six-digit NAICS Code as other sectors designated by ARB as eligible to receive Industry Assistance will be designated as EITE as a result of the leakage study. It may be

appropriate to allocate GHG allowance revenue to these industries according to the same timeframe as those already designated as EITE in D.12-12-033, with a provision for the funds to be returned if the Commission does not ultimately extend the EITE designation. This issue is best considered in the upcoming decision addressing EITE formulas and associated processes.

Conclusions of Law

1. Pursuant to the direction in D.12-12-033, it is reasonable to require the Commission's Energy Division to retain a consultant to undertake a study to determine what, if any, industries not already designated as EITE in D.12-12-033 face leakage risk as a result of the indirect GHG costs they will experience through their electricity purchases. A leakage study is necessary in order for the Commission to have the necessary data, methodologies, and metrics to thoroughly assess leakage risk. In order for Energy Division to undertake the study, it is necessary to adopt a preliminary scope of work and budget.

2. In order to facilitate consistency, and to avoid duplicative efforts, the leakage study should rely on the metrics and methodologies developed by ARB in determining leakage risk as a result of direct emissions unless the consultant, with approval of Energy Division, determines that alternate methodologies are more appropriate.

3. It is reasonable for the EITE expansion study to be divided into two broad phases. In the first phase, the consultant should assess the leakage risk of the industries selected for study, which will be determined by Energy Division in consultation with the consultant and parties to this proceeding. In order to undertake a leakage analysis, the consultant should recommend appropriate metrics to determine emissions intensity and trade exposure. Once leakage risk is determined, the consultant should recommend which industries, if any, should be designated as EITE and receive GHG allowance revenues pursuant to

D.12.12-033. If in the first phase of the analysis the consultant identifies new EITE industries, in the second phase the consultant should recommend methods and metrics for providing financial compensation to the industries relying upon the methodologies set forth in Appendix J, Allocation Methodologies, to ARB's ISOR on its proposed Cap-and-Trade regulation, unless the consultant, in consultation with Energy Division, determines that more appropriate methodologies exist.

4. The EITE expansion study should proceed according to tasks set forth in Appendix 1 to this decision; however, Energy Division should have the authority to establish the final scope of work to ensure a thorough and expedient evaluation of leakage risk.

5. The consultant's determination of leakage risk should consider both emissions intensity and trade exposure.

6. The leakage study approved in this decision should not be duplicative of any other leakage analyses being undertaken by ARB or any other state agency.

7. It is inappropriate for the Commission to find at this juncture that an energy-based revenue allocation methodology for industries potentially designated as EITE through the leakage study process is desirable without first knowing the characteristics of such industries. An output-based allocation methodology may be preferable for certain industries.

8. Energy Division, in consultation with the consultant and parties to this proceeding, should determine the industries to be evaluated for leakage risk, including the appropriate level of NAICS code for study (3, 4, 5 or 6-digit level), and the appropriate data sources to be used to evaluate the selected industries. Energy Division should consider the comments of parties on the EITE Ruling in developing a final list of industries for study, and Energy Division should provide parties an opportunity to provide feedback during the finalization of the

scope of work. Parties will have the opportunity to provide formal feedback on the list of industries selected for study and the methodologies used for determining leakage risk when the Commission undertakes its evaluation of the results of the leakage study.

9. The leakage study should be completed within one year of issuance of this decision with extensions granted as necessary by the assigned ALJ. Energy Division should make a reasonable effort to complete the study in an expedited manner depending upon the capabilities of the consultant.

10. Due process for all parties is essential; therefore, the Commission should not commit to any tightened comment period on proposed decisions addressing the leakage study at this time. The Commission may evaluate expedited comment periods on proposed decisions at the time of issuance of those decisions.

11. Given the uncertainty surrounding the scheduling capabilities of the retained consultant, a detailed procedural schedule should not be adopted at this time; however, upon retention of a consultant, the assigned ALJ should issue a more detailed procedural schedule and process, including study milestones. The schedule and process may be updated as necessary as the study progresses.

12. Energy Division should conduct the study in a manner that minimizes workload and expenditures. At this time, it appears that the optimal approach to achieve this outcome is to allow the consultant time to complete its Phase 1 and Phase 2 research and allow parties the opportunity to formally comment on the research before the Commission deliberates on the consultant's recommendations. However, if Energy Division identifies opportunities to accelerate its consideration of the issues, it should retain the ability to pursue those opportunities.

13. A study budget of \$500,000 is reasonable, is consistent with budgets approved by ARB for use in similar leakage studies, and should be adopted. Consistent with D.12-12-033, the large IOUs should be responsible for the costs of the leakage study, and the appropriate source of funding is GHG allowance revenues. Costs should be allocated across the large IOUs in proportion to the amount of 2014 vintage GHG allowances allocated to each utility by ARB.

14. CLECA's safe harbor proposal, whereby the Commission would preliminarily designate certain industries as EITE and return GHG allowance revenues to those industries, should be denied at this time. However, the Commission should consider CLECA's proposal – that sectors or subsectors with the same six-digit NAICS Code as other sectors designated by ARB as eligible to receive Industry Assistance should receive an allocation of GHG allowance revenue according to the same timeframe as entities currently designated as EITE – in the upcoming decision addressing EITE formulas and processes.

15. The utilities should not be ordered to set aside any GHG allowance revenues for use toward future entities receiving the EITE designation at this time. Industries not already designated as EITE under D.12-12-033 should operate under the assumption that they will not receive GHG allowance revenue and plan accordingly while the Commission undertakes the EITE expansion study.

16. The Commission should return GHG allowance revenue retroactive to the date that the Greenhouse Gas Cap-and-Trade program went into effect (January 1, 2013) to entities newly designated as EITE through the Commission's consideration of the leakage study. These payments should come from future years' GHG allowance revenues, and the resulting residential GHG allowance return should be adjusted accordingly.

O R D E R

IT IS ORDERED that:

1. Energy Division is ordered to undertake a study to evaluate the possible expansion of the emissions-intensive and trade-exposed designation, as defined in Decision 12-12-033, according to the high-level scope of work set forth in Appendix 1 to this decision. Energy Division is authorized to spend up to \$500,000 to retain a consultant with sufficient expertise to undertake the scope of work approved in this decision; however, Energy Division may modify the scope of work as necessary to achieve a thorough and expedient conclusion of the study. A detailed procedural schedule and process will be developed upon retention of the consultant and will include ample opportunity for informal and formal feedback from parties.

2. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E) must reimburse the Commission for its expenses in retaining a consultant to undertake an evaluation of the possible expansion of the emissions-intensive and trade-exposed designation as ordered in Decision 12-12-033. PG&E, SCE, and SDG&E shall use revenues from their auctioned greenhouse gas allowances to pay for this study with responsibility divided in proportion to the amount of 2014 vintage greenhouse gas allowances allocated to each utility by the California Air Resources Board. PG&E, SCE, and SDG&E must book these costs to their greenhouse gas administrative memorandum accounts authorized in Decision 12-12-033.

3. Rulemaking 11-03-012 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX 1

Appendix 1: Preliminary Scope of Work for the EITE Expansion StudyPhase 1:

- Task 1. The consultant should review and consider all relevant leakage studies. The consultant, in collaboration with the Energy Division and parties, will finalize the methodologies and data sources for measuring emissions intensity and trade exposure. The adopted methodologies should aim to maintain consistency with ARB's general approach set forth in ISOR Appendix K unless alternate methodologies are more appropriate.
- Task 2. The consultant will conduct an initial screening of the industries for two criteria: presence in California (yes/no) and a high-level assessment of emissions intensity and trade exposure, possibly using national data sets, to eliminate industries that are highly unlikely to pose a leakage risk. The consultant will then serve its resulting recommendation of industries to study in detail to the service list of this or a successor rulemaking for informal comment by the parties. Under the direction of the Energy Division, the consultant will finalize a list of industries that will receive a thorough emissions intensity and trade exposure analysis.
- Task 3. The consultant will then conduct its analysis and produce a draft report with preliminary metrics of emissions intensity and trade exposure by industrial sector, as well as recommended classifications of industries by leakage risk (high, medium, low, or no risk). The draft report must be served on the service list for this or a successor proceeding and parties may provide informal comments on the draft study.
- Task 4. After taking informal comments on the draft report, the consultant will produce a final report with recommended classifications of industries by leakage risk. The final report shall explain in detail the

methodologies, data sources, and results of the consultant's analysis. The final report will be incorporated into the formal record by written ruling of the assigned ALJ and parties will have an opportunity to provide formal comments on the final report.

Phase 2:

If, in Phase 1, the consultant identifies new industries it concludes should be deemed as EITE, the consultant must recommend, to the extent possible, methods and metrics for providing financial compensation to the industries, relying upon the methodologies set forth in Appendix J, Allocation Methodologies, to the ARB staff's proposed Cap-and-Trade regulation, unless more appropriate methodologies exist. The consultant must serve its draft recommendation on the service list for this or a successor rulemaking, and parties must be afforded the opportunity to provide informal feedback. Upon completion, the final report of the consultant will be entered into the record upon written ruling of the assigned ALJ. Parties will be invited to provide formal comments in order to inform the Commission's decision on the appropriate greenhouse gas allocation methodology.

(End of Appendix 1)